

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cv-00686-FDW-DSC

CHARLES TONY CAPE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
MAGIC ONE ARS, INC., <i>et al.</i> ,)	
)	
Defendants.)	


THIS MATTER is before the Court on Plaintiffs' Motion to Dismiss Counterclaim (Doc. No. 37). Defendants responded in opposition (Doc. No. 40), and Plaintiffs replied (Doc. No. 41). This matter is now ripe for disposition.

Plaintiffs filed their motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing for dismissal of Defendants' Counterclaim for unjust enrichment under the theory of quantum meruit because Defendants acknowledge the existence of a contract among the parties. Defendants object, asserting their alleged alternative theory for recovery is valid in the event the fact-finder in this case determines no valid contractual agreement exists. After review of the pleadings, as well as applicable law governing the instant motion, the Court finds resolution of this issue in this matter is more appropriate at the summary judgment stage or perhaps, at trial.

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Dismiss the Counterclaim is DENIED WITHOUT PREJUDICE to Plaintiffs' ability to reassert their arguments in a motion for summary judgment or at trial.

ORDERED.

Signed: November 17, 2017


Frank D. Whitney
Chief United States District Judge

